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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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7 CHRISTIAN FELIPE SALAZAR-LEYVA,
8 Petitioner,
9 v.
10 JEFFERSON SESSIONS, et al.,
11 Respondents.

Case No. [17-cv-04213-EMC](#)

**ORDER GRANTING RESPONDENTS'
MOTION TO DISMISS**

Docket No. 60

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Petitioner Christian Felipe Salazar-Leyva has filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241. In his petition, he argues that he is entitled to habeas relief because the Board of Immigration Appeals (“BIA”) violated the Constitution or other federal law by ordering his detention without bond pending removal proceedings. Previously, Mr. Salazar moved for, and was granted, a temporary restraining order (“TRO”). *See* Docket No. 20 (order). The Court found that there were serious questions going to the merits as to the two arguments made by Mr. Salazar – namely, that, in the bond determination, (1) the BIA improperly engaged in independent fact finding in violation of the Code of Federal Regulations and (2) the BIA improperly found that he had not accepted responsibility because he claimed he was not the aggressor in domestic violence incidents, even though this was a contention that he was allowed to make on the merits when challenging removability. The Court thus enjoined Respondents from detaining Mr. Salazar pursuant to the BIA decision and reinstated the earlier decision of the immigration judge (“IJ”) – which the BIA had overruled – ordering Mr. Salazar to be released upon payment of a \$6,000 bond.

After the Court granted the TRO, it deferred ruling on Mr. Salazar’s motion for a preliminary injunction because the parties reached an agreement that they would move the BIA to

1 reopen the bond determination to consider Mr. Salazar-Leyva’s two arguments above. *See* Docket
2 No. 28 (order). Subsequently, in February 2019, the BIA issued an order, stating that it was
3 reopening bond proceedings, vacating its decision, and remanding to the IJ

4 for further consideration of [Mr. Salazar’s] dangerousness in light of
5 our intervening precedential decision in *Matter of Siniauskas*, 27
6 I&N Dec. 207, 209 (BIA 2018) (holding that “[d]riving under the
influence is a significant adverse consideration in bond
proceedings,” and that an alien with significant family and
community ties has the burden of showing that “they mitigate his
dangerousness because of his drinking and driving”).

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8 Mot, Ex. A (BIA Order at 2); *see also* Mot., Ex. A (BIA Order at 3) (stating that “[t]he record is
9 remanded for further proceedings consistent with the foregoing opinion and for the entry of a new
10 decision”).

11 Currently pending before the Court is Respondents’ motion to dismiss. Respondents argue
12 that Mr. Salazar’s habeas petition is now moot in light of the BIA’s order vacating its prior
13 decision and remanding to the IJ for a new bond determination. Having considered the parties’
14 briefs and accompanying submissions, as well as the oral argument, the Court hereby **GRANTS**
15 Respondents’ motion.

16 I. DISCUSSION

17 Under Federal Rule of Civil Procedure 12(b)(1), a party may move to dismiss for lack of
18 subject matter jurisdiction. Because mootness “pertain[s] to a federal court’s subject-matter
19 jurisdiction under Article III, [it is] properly raised in a motion to dismiss under [Rule] 12(b)(1).”
20 *White v. Lee*, 227 F.3d 1214, 1242 (9th Cir. 2000) (adding that “Rule 12(b)(1) jurisdictional
21 attacks can be either facial or factual”).

22 “A case becomes moot when ‘it no longer present[s] a case or controversy under Article
23 III, § 2, of the Constitution.’ In order to satisfy the case-or-controversy requirement, the parties
24 must have a personal stake in the outcome of the suit throughout ‘all stages of federal judicial
25 proceedings.’” *Wilson v. Terhune*, 319 F.3d 477, 479 (9th Cir. 2003).

26 In the instant case, Mr. Salazar asked for the following relief in his habeas petition: an
27 order granting the petition and “directing the [BIA] to issue a new decision that complies with the
28 law.” Pet. at 22 (Prayer for Relief ¶ 5). As Respondents argue, the BIA’s decision to vacate its

1 prior decision has essentially granted Mr. Salazar the relief he seeks, and therefore the case is
2 moot. *Cf. Abdala v. INS*, 488 F.3d 1061, 1065 (9th Cir. 2007) (indicating that, where “the habeas
3 petitions raised claims that were fully resolved by release from custody,” “the petitioners’ claims
4 were rendered moot because successful resolution of their pending claims could no longer provide
5 the requested relief” – for example, “where a petitioner only requested a stay of deportation, his
6 habeas petition was rendered moot upon his deportation[;][I]likewise, a petitioner’s release from
7 detention under an order of supervision ‘moot[ed] his challenge to the legality of his extended
8 detention’”).

9 Mr. Salazar, however, argues that, even though the BIA has vacated its prior decision, his
10 habeas petition still is not moot for two reasons: (1) the BIA’s vacatur order has collateral
11 consequences and (2) an exception to mootness – *i.e.*, the voluntary cessation doctrine – applies.
12 The Court does not agree.

13 As to collateral consequences, Mr. Salazar argues that, because the BIA did not make a
14 specific ruling on the two errors he asserted in his habeas petition, the same errors could be
15 repeated either on remand before the IJ or on appeal of the IJ decision to BIA. But this is entirely
16 speculative.

17 For a collateral consequence to present a continuing live case or
18 controversy, it must be a *concrete* legal disadvantage, and not
19 merely a speculative or contingent injury. *See Spencer v. Kemna*,
20 523 U.S. 1, 14-16 (1988) (rejecting petitioner’s arguments that his
petition to invalidate an order revoking his parole was not moot
because of the potential consequences a parole revocation could
have on future civil or criminal proceedings as too contingent or
speculative); *see also Domingo-Jimenez v. Lynch*, No. C 16-05431
21 WHA, 2017 U.S. Dist. LEXIS 7782 (N.D. Cal. Jan. 19, 2017)
(rejecting petitioner’s argument that the allegedly unconstitutional
22 reliance on a police report to deny him bond at an earlier bond
hearing could negatively impact his asylum proceedings and
23 potential future bond hearings as too speculative, and dismissing
petitioner’s habeas petition as moot).

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25 *Perez v. Murray*, No. 18-cv-01437-JSC, 2018 U.S. Dist. LEXIS 95483, at *4-5 (N.D. Cal. June 6,
26 2018) (emphasis added). Here, it is entirely possible that, on remand, the IJ could make a finding
27 of no dangerousness and thus allow for release on bond – as the IJ did in the first instance before
28 the BIA overruled the IJ, which then led to the instant habeas petition. It is also possible that, on

1 remand, the IJ could make a supported factual finding of dangerousness because of Mr. Salazar’s
2 prior incidents driving under the influence, such that domestic violence would not be an issue that
3 all. The problems asserted in the petition herein may never arise.

4 Mr. Salazar argues still that the voluntary cessation doctrine applies such that his habeas
5 petition is not moot. “[A] defendant’s voluntary cessation of a challenged practice does not
6 deprive a federal court of its power to determine the legality of the practice.” *City of Mesquite v.*
7 *Aladdin’s Castle*, 455 U.S. 283, 289 (1982). The reason why is fairly straightforward: a dismissal
8 based simply on voluntary cessation ““would permit a resumption of the challenged conduct as
9 soon as the case is dismissed.”” *Bell v. City of Boise*, 709 F.3d 890, 898 (9th Cir. 2013). Thus,
10 “[t]he standard for determining whether a defendant’s voluntary conduct moots a case is
11 ‘stringent.’” *Id.*

12 When a party abandons a challenged practice freely, the case will be
13 moot only

14 “if subsequent events made it *absolutely clear* that
15 the allegedly wrongful behavior could not reasonably
16 be expected to recur” The “*heavy burden of*
17 *persuading*” the court that the challenged conduct
18 cannot reasonably be expected to start up again lies
19 with the party asserting mootness.

20 *United States v. Brandau*, 578 F.3d 1064, 1068-69 (9th Cir. 2009) (emphasis in original).

21 Here, however, the BIA’s decision to vacate is not fairly deemed a “true” voluntary
22 cessation because this Court’s TRO decision was what led to ICE’s motion to reopen and the
23 BIA’s decision to do so. *Cf. Or. Nat. Res. Council, Inc. v. Grossarth*, 979 F.2d 1377, 1379 (9th
24 Cir. 1992) (stating that “the [Forest] Service’s cancellation of the Auger Sale and its
25 announcement that it would prepare an [Environmental Impact Statement] in compliance with
26 NEPA for any future sales was not a voluntary cessation within the meaning of that doctrine, but
27 was instead the result of [plaintiff’s] successful administrative appeal”). In any event, the
28 allegedly wrongful behavior cannot reasonably be expected to recur (for the reasons stated above).

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II. CONCLUSION

Accordingly, Respondents' motion to dismiss based on mootness grounds is granted. In so ruling, the Court notes that it is not barring Mr. Salazar from filing a new habeas petition if the bond hearing results in a new violation of the law. Mr. Salazar may ask that any such new habeas petition (if filed) be related to the instant case. Respondents stated that they would not oppose relation.

This order disposes of Docket No. 60.

IT IS SO ORDERED.

Dated: May 1, 2019



EDWARD M. CHEN
United States District Judge